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PREVENTIVE CIVIL LIABILITY AND ITS EDUCATIONAL PRINCIPLES IN THE HIGH SCHOOL SOCIAL STUDIES TEXTBOOK

RESPONSABILIDAD CIVIL PREVENTIVA Y SUS PRINCIPIOS EDUCATIVOS EN EL LIBRO DE TEXTO DE ESTUDIOS SOCIALES DE LA ESCUELA SECUNDARIA

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ABSTRACT

Civil liability has always been subjecting the theoretical developments under the influence of industrial and social developments in different eras in the high school social studies textbook and educational era. Nowadays, as events become more complicated, foresight and prevention of damage have overtaken the retrospect and following the traditional rules of compensation. "Preventive civil liability" is among the new trends in the trajectory of development of civil liability. This new approach relies on "foresight" and "prevention" of the damage and preventive role of civil liability. Preventive civil liability can be justified with a number of legal principles in Islamic law. The roles of prevention, deterrence and compensation, which are among obvious symbols of preventive responsibility, are compatible with a lot of legal mechanisms in procedural and substantive laws of Iran. The foundations of this new approach are the new rules of civil liability in Western law. This study was conducted aimed at expressing the restorative and complementary roles of preventive civil responsibility with respect to compensatory civil liability by introducing and explaining the position of this new approach and its Islamic and common principles.

Keywords:

Preventive civil liability, compensatory civil liability, warning rule, action rule, rule of mitigation of damage, rule of foreseeability of damage, precautionary principle.

RESUMEN

La responsabilidad civil siempre ha estado sujeta a los desarrollos teóricos bajo la influencia de desarrollos industriales y sociales en diferentes épocas en el libro de texto de estudios sociales de la escuela secundaria y la era educativa. Hoy en día, a medida que los eventos se vuelven más complicados, la previsión y la prevención de daños han superado la retrospectiva y siguen las reglas tradicionales de compensación. La "responsabilidad civil preventiva" se encuentra entre las nuevas tendencias en la trayectoria del desarrollo de la responsabilidad civil. Este nuevo enfoque se basa en la "previsión" y la "prevención" del daño y el papel preventivo de la responsabilidad civil. La responsabilidad civil preventiva puede justificarse con una serie de principios legales en la ley islámica. Los roles de prevención, disuasión y compensación, que se encuentran entre los símbolos obvios de la responsabilidad preventiva, son compatibles con muchos mecanismos legales en las leyes procesales y sustantivas de Irán. Los fundamentos de este nuevo enfoque son las nuevas reglas de responsabilidad civil en la ley occidental. Este estudio se realizó con el objetivo de expresar los roles restaurativos y complementarios de la responsabilidad civil preventiva con respecto a la responsabilidad civil compensatoria mediante la introducción y explicación de la posición de este nuevo enfoque y sus principios islámicos y comunes.

Palabras clave:

Responsabilidad civil preventiva, responsabilidad civil compensatoria, regla de advertencia, regla de acción, regla de mitigación de daños, regla de previsibilidad de daños, principio de precaución.

INTRODUCTION

The traditional view of civil responsibility always looks to the past. In order to identify the principles justifying the liability in determining which agent (s) are liable and the extent of the liability, the jurist explores the past to take a step forward by deliberating on the subject. In the civil liability treatment approach, damage is always superior. We will never be allowed to overtake it, and the ultimate goal of civil liability is to require the criminal to compensate for damage. Here, the jurist plays the role of a police who always arrives at the scene of a crime after the crime is committed to save the victim.

The question why are you looking for another role for civil liability? can be answered so: In the first place, "fault" and "danger" as the most important principles of compensatory civil liability lack the sufficient comprehensiveness and, in some cases, they are not able to cover all aspects of an event and determine the liable person. However, the role of compensation in some of the damages, such as damages due to violation of intellectual property, and objective or personality rights, is inadequate and fundamentally not described as compensation. The purpose of compensation is merely to heal and divert the mind of the victim. For example, in the event of bodily injury and death, it is never possible to restore the situation before damage. In the case of other damages, in spite of the principle of "full compensation", restoring the victim to its pre-damage status is only an ultimate goal that even if achieved, the time cannot be restored.

The study was motivated by the following questions: Does avoiding systematic preventive measures creates a liability? Is the precautionary principle and its requirement being justifiable in Iranian law in the high school social studies textbook?

Depending on the damage created, the precautionary principle provides for deterrent mechanisms and requires the person creating the damage or the person at the risk of damage to apply them. According to this principle, avoiding prevention brings about a liability. In Iranian law, such as common law, liability for damages arising from the abandonment of preventive requirements is justified on the basis of legal rules.

Foresight is stimulated by economic justification and the preservation of capital. One of the consequences of the damage is the return to the past and the loss of some of the wealth and economic power of society. Although compensation is given to the victim for damages, this will only transfer the burden of damages from the victim to the agent for damage. In fact, lost property cannot be recovered. However, "preventive civil liability" is a tool that avoids this damaging process, complementing the role of civil liability in safeguarding wealth, economic prosperity and preventing waste.

In Iranian law, several standards have been laid down in the regulations on the provision of services, production and supply of products that are based on foresight and deterrence, in addition to the provisions on tortious and contractual liability in civil law and civil liability or other substantive law. For example, in national building regulations, required criteria are set out for engineers to minimize damage. Similarly, labor law, pharmaceutical and health regulations, transportation, and many other areas have defined appropriate requirements and sanctions aimed at preventing damage and controlling the risks of operating in different social areas.

So the foresight and preventive look at civil liability is not unprecedented in our legal records alongside looking back at the past for compensation. We do not seek to trivialize the compensatory role of civil liability, but seek to find a complementary role that slightly reduces its heavy burden with a view to preventing damage, with the knowledge of the importance of compensatory role of civil liability.

Foresight to prevent the damage, reducing or securing compensation is a finding of procedural and substantive rules in line with the principles on compensation, which we call "preventive civil liability".

In Vocabulario Jurídico de Henri Capitant (in French law), prevention is defined as *"a set of measures or institutions to prevent or at least limit the hazard occurrence, damage production, damaging acts fulfillment, etc".* (Cornu, 2003)

In British contract law, "prevention" is an old established principle. According to this principle, whenever the contracting party refuses to perform its contractual obligation, the other party has the right to refuse to perform the reciprocal obligation. This principle is in some way the principle of contract alignment, and no party can benefit from its breach of contract.

The prevention principle has long been used in international documents. Article 15 of the 1992 Rio Declaration states: *"In the face of threatening and irreparable damages, reviewing effective measures to prevent market drop should not be postponed on the pretext of lack of reliable methods".* Its prevention and function have been mentioned in other international agreements such as the Climate Problems Conference (1992), the Convention on Biological Changes, the Maastricht Treaty, the Protocol on Biosafety (Biosofety) (Zolghadr, 2004), the Stockholm Declaration (1972), the UNEP Principles draft, the World

Charter for Nature (1982), Article 2 (174) of the EU Treaty and Article 2 of the Vienna Convention for the Protection of the Ozone Layer (1985) (Molaee & Lotfi, 2019).

According to the principle of "foreseeability of damage", the principle of "proportionate prevention" is the most important principle of judicial assessment. In other words, this principle provides the maximum judicial interpretation for a preliminary assessment of damages (Sintez, 2010).

The prevention principle prevents the occurrence of definite damages that have not yet occurred and will occur if no preventive measures are taken. In this legal principle, damages are called definite because the causal relationship between the damaging act and the occurrence of the damage has been scientifically proven (Dascălu & Urs, 2012).

Instrumentalism in law means that law is created to achieve a particular outcome or purpose, so the legal rules and institutions designed for it cannot be justified and other mechanisms must be replaced if that outcome or purpose are not achieved. For economic instrumentality in civil liability, civil liability alone is a substitute for the market and private contracts and a tools for achieving economic efficiency by motivating individuals, distributing losses and internalizing external costs of events.

Contrary to conventional views, from the economic analysis view, prevention is the primary objective of civil liability. In this view, the only reason for using a civil liability system is to allow risky activities only if their social value is sufficient to justify their risks (Mattiacci & Parisi, 2006).

The preferred assumption is that in the event of a sense of potential civil liability, all individuals tend to avoid behaviors that can lead to civil liability. In some cases, however, deterrence is no longer preferable if its cost is greater than the civil liability resulting from the damaging act.

The concept of prevention in this discussion is closer to the definition provided by French law. Prevention means finding a mechanism to overcome the damage. Damage Prevention is intended to avoid some of the disadvantages of this form of civil liability in addition to strengthening the treatment mission of civil liability medical. By changing the tactic of obligation to compensate, civil liability prevents or controls damages through the tactic of prohibition of fault and warning. So the theory of "preventive civil liability" enables us to prevent damages or minimize them.

Damage is caused by damaging act. With its soft and hard mechanisms and its deterrent tools, prevention seeks to prevent damaging act or damaging agent. During the realization of the damaging act and before its damaging effects, prevention must control the act and divert it from the damaging outcome. After the damaging agent is realized, the task of prevention is to mitigate the scope of the damage.

Preventive civil liability has several minor functions including prevention, deterrence, and compensation.

Some mechanisms have been developed to use its preventive effect. They prevent damaging act or the continuation of its damaging effects and contribute to non-realization or mitigation of the damage. For example, one may refer to the installation of warning signs, and the execution of writ of security for the relief sought because of sought being exposed to wasting.

Deterrence is important for two reasons. Sometimes this role is one of the effects of compensatory civil liability, meaning that by transferring the burden of compensation to the damaging agent as a civil penalty, other persons avoid committing damaging act and fault. Another reason is that it comes directly from the implementation of preventive responsibility mechanisms. For example, the requirement to security for eventual damages, adequate security for the relief sought, interim order, or appeal for delaying or suppressing the execution of order are preventive mechanisms to secure financing in order to secure compensation. At the same time, requiring the applicant of any of the above security measures to avoid the liability for compensation resulting from those measures in the face of the task of securing is hampered by the deterrent effect of that preventive measure and the claim for cancellation and damage that might have come to the defendant due to the seizure of property, the execution of the interim order and the delay or suspension of the execution of the interim order will not be resulted.

The importance of the role of deterrent to civil liability is such that its advocates hold that transferring the costs of events from victims to natural or legal persons who could have prevented the occurrence of the events, by filing a lawsuit, motivates them to invest in events prevention rather than compensation. In fact, people's willingness to avoid compensation can be a powerful incentive to prevent an event. On the other hand, bearing the liability by the agent of a particular act because of its past performance forces other persons in a similar position to prevent damaging acts from occurring in the future by taking precautions that are justifiable in terms of costs.

The importance and role of prevention in determining compensable damages is to the extent that, under Article 2: 104 of the Principles of European Tort Law, expenses incurred to prevent threatened damage amount to re-coverable damage in so far as reasonably incurred.

In French law, preventive measures are taken by the court at various stages of damage mitigation: before a damaging event occurs with "preventive measure and precaution ", when it occurs with "deterrent measure", after it occurs with "provisional compensation", "and after legal recognition with" damage and sentencing".

In the role of compensation, preventive civil liability takes precedence over damages through specific mechanisms and provides a way of compensation with the view of facilitating compensation. Provisional compensation and appropriate security are among these preventive compensation mechanisms. The security from plaintiff allows for easily compensation due to the security after the final sentencing on the plaintiff conviction.

However, the role of prevention of civil liability means the use of civil liability as a means of preventing the realization of damage that is at risk of occurrence.

Preventive civil liability can be defined as: liability for breach of rational, common or legal requirements or failure to apply them in the form of preventive mechanisms by the agent of damaging act, person threatened by damage, victim or a responsible official to prevent, control or mitigate damages.

The main goal of "preventive civil liability" is to prevent damage. However, the realization of this ultimate goal requires the achieving other primary goals pursued by the establishment of this type of civic liability. These goals can be summarized as follows:

DEVELOPMENT

Damage causes the loss of the community's financial and spiritual resources, creates tensions between people and imposes costs on the sovereignty. The role of civil liability to compensate the damage is very important. Damage, however, is an unpleasant event in which finding a way to prevent is far less costly than requiring to compensate. In the theory of "preventive civil liability", this goal is accomplished by defining a new role of civil liability with respect the existing potential and reinforced by highlighting the role of deterrence and prevention.

In instrumental theories, civic liability is considered as a means of achieving goals that are socially justifiable and desirable. Among these goals are economic efficiency and deterring individuals from engaging in anti-social and damaging and behaviors.

Identifying damaging acts, overtaking the agent before committing the act, and acting quickly to prevent or stop this behavior dries out the source of the damage and controls the damaging acts by the person being harmed. For example, a neighbor starts non-normative excavation near our property without studying the mechanics of the local soil and knowing the adjacent structures. Identifying this behavior that can lead to irreparable financial and life damages and overtaking it is achieved through "preventive civil liability" by preventing the behavior from being continued, requiring the neighbor to complying with technical standards, securing adjacent workshops and structures, and control over the damaging act.

Reduction of the scope of damages

The adverse effect of the damage has so permeated the minds of society that it has influenced folk proverbs. It has been reasonably stated that "Wherever you prevent damage, you profit", or "It is a profit to return from the half damage". These statements refer to the importance of limiting the scope of damages that have been institutionalized in the society by wise people and become popular amongst the populace with culturalization. It is possible to reduce the scope of damage or to prevent its continuation by defining liability for those who are subject to damage, using reasonable and conventional approaches. One of the other goals in redefining civil liability in the form of "preventive civil liability" is to reduce the scope of damages.

One example is when a wheat field is set on fire and there is a potential for fire to spread to the adjacent farm and the owner of the adjacent farm intends to make the gap between the fire and the rest of the wheat field by quickly reaping, plowing and turning the soil as a barrier, or watering part of the land, despite having enough time and facilities to prevent the spread of fire, save part of its farm and reduce the damage. The system of compensatory civil liability makes the farmer subject to damage lazy, because the first thing that comes to his mind is the liability of the culprit for the compensation. With the impression that the compensation is the liability of the fire agent, the farmer avoids trying to prevent the spread of fire in his wheat field and thus reducing the amount of damage. The purpose of civil liability is to oblige the farmer subject to damage to prevent the spread of fire and to mitigate the damage. In this system of liability, this person, although not being the fire agent, has been involved in expanding the scope of the fire, despite being preventable, and will be held liable. So he must bear the amount of damage caused by his laziness and that part of the damage will remain uncompensated. At the same time, he would certainly prevent himself from increasing the amount to himself if he were aware of his preventive liability. So we need to institutionalize this liability in society.

The other purpose of this type of liability is to predict the amount of damage and requiring the person who

is likely to do a damaging act, to provide a security for compensation. Damage forecasting is discussed as one of the limiting sources of damages in contractual liability. Another purpose of establishing "preventive civil liability" is to overtake the damage agent by obtaining appropriate security before the damage, relying on the legal capacities to extend this function to tortious civil liability. A great step to compensate is to provide an appropriate source of compensation and reduce the suffering of the victim after the damage. In "preventive civil liability", a compensation strategy is offered before damages and the person subject to the damage is assured that he or she has a source of compensation.

One of the objections to group civil liability or compensation by insurance, government, social security and other similar entities is that the real person liable for compensation is exempt from actual compensation and the deterrent effect of civil liability is eliminated. This is because the insurer exempts the insured from compensation by securing damages arising out of his / her fault or liability, and eliminates the deterrent effect of his / her liability for damaging others and avoiding damaging acts or creating a dangerous environment. This objection has been remedied in preventive civil liability because the security for compensation is taken from the damaged person. This measure has two benefits. The first is the deterrence effect before the damage in which a person refuses to accept liability for compensation, commit security, and consequently for damaging act, knowing that he or she must commit a security for compensation. The second is the deterrence effect after the damage regarding to the future and avoidance of repetition, because the heavy burden of damages prevents the repetition of damaging acts in the future by compensation due to security.

Mainly Western scholars have put forward a set of rules on Islamic law and modern theories on civil liability, the focus of which is on the identification of the liable and compensation practices. By delving further, a single message can be extracted that reinforces the impact of damage prevention, changes in civil liability strategy, and a move toward the foresight. These theoretical principles are divided into two groups.

In the Islamic law system, jurists have put forward general formulas for the inference of finite and specific matters, which are cited as legal evidence to prove the verdict and the subject. We have explored these rules and formulas and found some of the rules that justify the legitimacy of our case to prove the legitimacy of "preventive civil liability". Below, how they relate to "preventive civil liability" are described. It is noteworthy that some other rules such as "causation" and "wasting" were also citable, but they were not mentioned because they were among proactive evidence of the rules discussed.

Warning rule

Warning rule is one of the most important principles of civil liability, which is derived from the hadith of "There is no liability for who warns". This narration is attributed to Imam Sadiq (PBUH), which was quoted from Imam Ali (PBUH) (Mohaghegh Damad, 2000). According to this rule, if anyone warns before committing an act that may harm others and the addressee or listener ignores his / her warning and puts him / herself at risk of being harmed as a result of that act, the warning person will not be liable.

Warning is mentioned as a factor that removes the liability for compensation from the damaging agent. In referring to the religious principles and the theoretical arguments of this rule, the jurists refer to verse 195 of Surah Al-Baqarah, the narrative on the basis of which the rule is named, and the rules of "causation", "practical reputation", "wise procedures" and "action".

With a little scrutiny of the underlying cause of the damaging person exemption from compensation, it can be found that just the damaging preventive measure exempts the person who causes the damage from compensation, because if we remove the liability agent for the "warning" liability, the agent will be liable for the compensation.

Regarding the cause eliminating the alert warning, it is stated that the warning interrupts the citation relationship between the act of the damaging agent and the damage.

Therefore, "warning" is in the first place a preventive and prospective measure rather than an agent for removing civil liability, as it is intended to prevent damage and to warn those exposed to damage. In addition to being a ground for impunity for compensatory civil liability, this rule is one of the factors to identify the person liable for the damage, a proof of the status of "preventive civil liability" and the mission of this type of liability is damage prevention.

The very important role of a "warning" is to prevent damage and to avoid being stuck in it. The value of a preventive approach appears when this preventive measure is effective and safeguards tens and in some cases thousands people from damage. Suppose a drilling company has dug a part of road to open a route for a water pipe to cross a highway. It is very likely that dozens of cars crash into pits and collide with each other, or the damage occurred, if the company does not warm the driver of the pits and drilling operations on the highway with the appropriate distance and equipment. However, cars can be prevented from crashing into pits or subsequent collisions by installing warning signs at the right distance, and only a

small number of drivers can rarely be damaged as a result of negligence. In this example, the "warning" has played a key role in preventing the widespread damage and daily crashes of dozens of cars and severe accidents involving irreparable enormous lives and financial losses. In the second role of liability removing, in the event of several accidents despite installing warning signs, the precautionary factor comes into play and causes the negligent driver to be damaged.

The importance of preventive measure of warning is to the extent that it also affects compensatory civil liability and eliminates the causal relationship between the damaging act and the damage and attributes the damage to another sub-agent. However, in routine matters and without the intervention of the preventive measure of warning, the agent of the damaging act which has a common causal relationship with the damage, in our example, the drilling company, was known as the only liable for compensation under the rule of causation.

Iranian positive laws have not ignored the status of this preventive measure. In some of these laws, the warning has been mentioned following by jurisprudence. Here, some of the rules, that are reasons for the application of preventive civil liability, are referred to.

Note 2 Article 508 of the Islamic Penal Code of 2013 stipulates: *"When anyone commits one of the acts mentioned in Article (507) of this Law in the property of another person without his / her permission, causing damage to a third party who entered the property without permission, one who has committed the act is liable for the blood money unless the damage is documented to the damaged person him / herself. In that case, the committing person is not liable. For example, the committing person puts warning signs or locks the door, but the damaged person enters regardless of signs or breaks the door. Here, warning signs, which are among preventive agents, are referred to as liability removers. Article 509 of the same law states: Whenever a person commits an act of pedestrian interest in the public passages or places in accordance with legal regulations and safety tips and accidentally causes a crime or damage, he is not liable. The warning agent in this article lies in "observing safety tips" (*Islamic Consultancy Parliament, 1991). ***In*** this article, the legislator departed from the basis set forth in Article 341 of the Islamic Penal Code of 1991 (Article 341: Whenever a person commits an act of pedestrian interest in the public passages that causes crime or damage, he /she is not liable for blood money and damage), which was based on the "rule of bona fide", and relied on the observance of legal regulations and safety tips of the examples of which is warning, recognizing the importance of "warning" as a factor in preventing damage and eliminating civil liability.

There are numerous other scattered provisions in various laws that have highlighted the role of "warning" as a deterrent to damages as well as eliminating liability and an essential element in determining the liable person in civil liability.

In French law, the obligation to warn, which many craftsmen are required to do (Jorden, 2015), can be considered as one of the means of preventing damage and within the framework of "preventive civil liability". This approach and foresight also influenced French judicial practice, in such a way that in the Verdict by the second branch of the French Supreme Court on May 2, 1946, the failure to install warning signs by a farmer who was damaged by the hunter's entry into the garden has been identified as the reason that the hunter was not liable and the farmer was guilty. In another verdict issued by the court on June 19, 1996, the lack of warning caused liability in addition to the contractual liability in the tortious liability (Akbari, 2017).

Principle of harm

One of the most popular rules cited in most jurisprudence matters is the principle of harm. The principle of harm is derived from a hadith from the Holy Prophet (PBUH). Despite various opinions on the meaning of the hadith, the meaning that the Islamic jurist has not enacted any rules (impressive or positive) that would harm anyone, has been accepted.

The relevance of this rule with preventive liability is that if a person who is exposed to harm does not take preventive measures that he / she was able to do and that any other person would do the same in the face of harm, he / she would be liable for the harm that he / she could to prevent or mitigate. As a result, this rule reinforces the position of preventive civil liability. According to this rule, individuals are compelled to take any measure that would prevent or reduce the harm, otherwise they will be liable.

Action rule

In the jurisprudence, the content of the "action rule" is this: Whoever takes measure against his property, no one has civil liability in his favor. As in the case of a possessor in a void contract in which the owner has permitted the other party to take possession of the property, whenever the property is lost on its own, or the possessor lose it or transfer to a third party, he / she will not be liable for the owner. This is because the owner has lost him / herself by the profession of his / her property (though it is in the

course of a void contract) and the law does not protect such a person (Mousavi Bojnourdi, 1996).

Jurisprudents have resorted to numerous hadiths to prove this rule, including the "possession and use of others' property is not allowed unless with their consent" and have stated that anyone who takes action for his own harm or accept a harm or liability with the knowledge and consent, deserves no compensation. Moreover, the wise men of society believe that as you make your bed, so you must lie on it, so the "action" rule is a rational one (Mohammadi, 1995).

In reference to this rule as a basis for preventive civil liability, two aspects can be noted: First, in some rules, some of which are set forth under the warning rule, individuals are required to take preventive measures and warn those who are exposed to harm by the harmful act of the person who warns. According to those rules, those who violate the law and refuse to take preventive action are held liable for compensation of the harmed person due to the fault of not warning, and according to the action rule, their act abandonment the with knowledge justifies harm to them.

The second is about those who have been exposed to the risk of injury, who refuse to take preventive measures and endure the damage, although it is possible to prevent or reduce it by applying some common and conventional approaches.

In this group also, the imposition of damages resulting from the abandonment of preventive measures and exemption of the agent of the harmful act from compensation is based on the action rule.

So the action rule requires that individuals take steps towards preventive civil liability to protect their property and to prevent or reduce damage.

Principles based on common law

In order to safeguard capital and social benefits, and to prevent the loss and making rights purposeful based on economic interests, jurists have developed rules on the basis of legal principles aimed at preventing damages in civil liability, all of which play a fundamental role in creating "preventive civil liability" with the definitions and objectives stated. In this section, these common laws and the relationship between them and "preventive civil liability" are discussed.

The rule of mitigation of damages

Mitigation of damages is a rule accepted in common law. This rule in breach of contract means that the obligee is obliged to take the necessary measures to mitigate or prevent the spread of damages that may result from the breach of contract. This obligation is not a positive one for a person who has harmed due to the breach of contract, and does not oblige him / her to actually do those acts, but is free to do or not to do so. It is so much the better if the necessary measures are taken and the damages are prevented. Otherwise, if the plaintiff fails to take the necessary measures to mitigate the damage, the defendant cannot prosecute and hold the plaintiff liable for violation of the obligation. The sole effect of the obligation is that the contract violator may resort to the rule of mitigation of damages, as a defense, and reduce the damages claimed if the plaintiff files a lawsuit and claims for compensation for the contract violation.

Although this rule emerged in common law with regard to contractual and commercial relations and was incorporated into international documents, its evolution transcended the mere contractual relationship, and also included non-contractual relationships between the damage agent the damaged person. It is therefore said that in the face of harmful acts and damages, the harmed person must take all reasonable measures to deal with the damage, otherwise he or she cannot claim for the compensation of the damages that have been deductible.

Losses that are not proven due to the inability to prove the technical conditions and principles of civil liability and consequently the obligation of the plaintiff to compensate for damages, or the scope of damages is reduced due to fairness, despite proving the principles of liability, differ from the subject of the rule of mitigation of damages. Contrary to those case, here the principles of liability are certain and the obligation of the plaintiff to compensate for damages due to the fault or violating the covenant is constant. However, since it was possible for the defendant to avoid all or part of the damage, he / she is not entitled to compensation for that part of the damage. In other words, the plaintiff is entitled to be as extremist as wants to be, but he / she cannot do so at the expense of the defendant.

In French law, there is no consensus on this rule. The country's civil law has not issued a ruling on it and has not upheld its judicial procedure. Citing the "faute commune" rule, the former French law doctrine addresses the issue of the harmed person interference in the occurrence of harm and calls for the same result of the applying to the rule of mitigation of damages. However, influenced by the introduction of the rule of mitigation of damages in the three international documents, the **Con**vention on Contracts for the International Sale of Goods, the Principles of International Commercial Contracts, and the Principles of European Contract Law, contemporary French jurists have tended to believe that the rule of mitigation of damages

effectively relies on the duty of the parties to cooperate with each other, that is one of the manifestations of the principle of "good faith". It is also stated that economic benefits require that the injured person take common action in the face of damage and prevent its development.

The principle of "mitigation of damages" has been predicted in Article 1373 as an independent rule by the authors of the French Civil Code Amendment Bill. The article stipulates: If the injured party is able to take safe, reasonable and appropriate measures to reduce or prevent the deterioration of the damage, failure to do so will result in damage compensation, unless the nature of the measures is such as to endanger his / her physical integrity (Shoarian & Torabi, 2016).

Iran's civil law also does not provide for a general rule for the mitigation of damages, but the effect of this rule can be seen in some regulations. Pursuant to Article 507 of the Islamic Penal Code of 2013, the possibility of an injured person avoiding falling into a pit dug into another person's passage or property or collision with a slippery object is regarded as his or her deliberate act, and the injured party is not considered to be liable for compensation and the damage is imposed on his / her due to preventable damage, in accordance with the principle of "mitigation of damages". Article 512 of the same law also stipulates that if a pedestrian collides and causes damage, despite the possibility of preventing the damage due to the extent of the road, he / she is liable for compensation to several persons in addition to bearing the damage to him / herself (Article 114 of the Marine Act provides a similar sentence).

In accordance with paragraph 3 of Article 4 of the Civil Liability Act of 1960, the court shall have the discretion to reduce damages in the event of the intervention of facilitation of the creation or addition of damages or aiding the status of damaging agent.

According to Article 15 of the Insurance Act of 1937, in order to prevent damage, the insured must take the care of the subject of insurance as anyone does regarding his / her property habitually, and take measures necessary to prevent the spread of damage in the event of an accident approaching or occurring. Otherwise, the insurer will not be liable. This article is not based on contractual relationships. However, while enumerating the conventional and reasonable duty of the injured party, the law mitigates damages and obliges the injured party to take the common and necessary action to prevent the development of the damage. Otherwise, the damage will not be compensated by the insurer.

The above legal rules, based on the rules of "causation" "action," and "harm," have the potential to derive a general rule from the obligation of the injured party to mitigate damages by taking reasonable measures in our law and prove the explicit inclusion of this rule in amending the laws.

As noted above, the liability for the prevention of damages has been clearly stated in the laws of the developed countries and has penetrated into international documents and has a long history in jurisprudence and the principles of Islamic law. This rule can be one of the foundations established to support the new approach to "preventive civil liability".

The rule of foreseeability of damage

The rule of "foreseeability of damage" means the limited liability of the contract violator or the damage agent to compensate for damages that are reasonably foreseeable from the breach of the contract or action and that the damage agent was able to foreseen it (Ghamami, 2009).

Damages from violation or harmful actions are sometimes ordinary damages and the ordinary result of that actions that are not unexpected. However, sometimes there a lot of damages are created that are not a normal and natural consequence of the violation.

According to the rule of foreseeability of damage, under any circumstances, it is not justified that the damage agent to be held liable for more than the amount of damage normally expected of his or her action, and excess damage cannot be compensated.

The idea of limiting the scope of liability for compensation for violator in French law has been extracted from the votes of Potheir (Ghamami, 2009), the famous old jurist, and is brought to Article 1150 of the French Civil Code. The article stipulates: the obligated party is not liable for damages which he did not anticipate or it was not foreseeable at the time of the contract, provided that the failure to perform the obligation is not caused by his / her deliberate fault.

So the liability of contract violator is limited to the foreseeable damages from his / her action. Every person has an idea of the expected consequences of the damages to the oblige resulting from his or her violation. If this expectation is consistent with the expectation of the amount of damage, the violator liability is limited to the same expected damage, and if the violation of contract results in an unconventional and unexpected damage, the violator is not liable for the excess damage. In French law, this rule is limited to contractual liability and does not apply to tortious liability.

Common Law has accepted the limitation of liability to the foreseeable consequences of both contractual and

tortious liabilities. In contractual liability, the source of the limitation is affected by the rule of "remoteness of damage" (Habibi, 2012). According to this view, the criterion is whether at the time of the contract, the claimed damage conventionally came to the minds of parties. This view is consistent with the foresight of damages in the French legal system. The summary of the rule in Common Law is that the defendant should not be held liable for the consequences that no normal human can foresee at the time of the contract or event.

By citing Articles 301, 307, 614, 230, and 221-306 of Civil Law, Articles 379 and 386 of the Commercial Code, some provisions of the Islamic Penal Code and the Rule of Causation, the researchers attempt to induce this rule to be applicable in contractual and tortious civil liabilities in Iranian law. Foreseeability of damages as a limiting factor of liability is not explicitly mentioned in any of Iran's rules. However, the position of the rule foreseeability of damage in tortious relationships can be emphasized by adding a clause to Article 4 of the Civil Liability Act as another case where the damages can be mitigated using the rules that have been put as the basis in the above articles.

The relationship between this rule and preventive civil liability is its preventive role and psychological effect in damage control. Conventional damages prediction the parties to the claim for damage to consider the amount of the compensable damage at the time of the event, and prevent the spread of damage beyond the conventional limit by taking preventive measures.

Precautionary principle

Today, alongside advances in science and technology and the provision of comfort for humanity, avoidance of the dangers that endanger human life and the environment has been accepted as a general principle of law. This principle which was first applied to the environment, gradually came to public health and consumer rights protection in the laws of many Western countries, including the European Union.

In domestic law, it is suggested that the "precautionary principle" goes back to the idea of German scholars on "principel de prévoyance ou principe de souci". This principle in German law means attention and care with concern in cases where reason and science warn that action may be harmful. In this case, the government is obliged to change the behavior of the society by persuasion or regulation of the principle. Initially, this principle introduced to European law in the Maastricht Treaty and became part of its binding principles of that area. More than fifty binding legal agreements and forty non-binding international document recognized the precautionary principle in line with its acceptance in environmental and public health laws (Kadkhodaei & Salari, 2017).

In French legal dictionary, this principle is defined as follows: The precautionary principle (le principe de précaution) is a legal principle according to which public authorities must take the necessary measures to anticipate the potential risks associated with an event the consequences of which are difficult to control.

The precautionary principle was adopted in the Barnier Law on 2 February 1995 in France. Articles 1-110 on the Environment stipulates regarding this principle as: The uncertainty of current scientific and technical data should not delay the adoption of effective and proportionate measures to prevent severe and irreparable damage to the environment can be spent at an economically acceptable cost (l'absence de certitudes). Article 5 of the French Constitution of 2005 states: "***In the event of a damage, although scientifically uncertain, which it can profoundly and irreversibly affect the environment, public authorities are obliged to take temporary and appropriate measures in order to avoid the usual damage, based on the precautionary principle and within their jurisdiction with the risk assessment (Lorsque la réalisation d'un dommage)".***

In today's law, the logic of prevention goes beyond precaution. Precaution has often been taken into consideration by international law in the matters of the environment and the duty of governments. The idea of damage prevention is a pervasive customary rule that is addressed in different areas.

Theoretically, precaution is a step beyond prevention, meaning that in prevention, the damage caused by action is foreseeable and the person is required to prevent harmful or foreseeable action, but in precaution, damage and essentially hazard are both contingent and unforeseeable.

In other words, agents and governments are required to take precautionary measures to avoid the potential irreversible, burdensome, or uncertain dangers of acts, in order not to completely dominate human science over all effects and consequences of an event or series of events resulting from development and technology. However, in prevention, human science is aware of the effects and consequences of its performance, and any common sense can predict the damages from it. Therefore, the precautionary principle is defined as follows: ***"avoiding any action that may endanger human health, survival and the environment"***. (Hayati, 2014)

The similarity between the prevention principle and the precautionary principle is the time to apply them before

damage and their damage prevention aspect. One difference between them is that preventive measures can be temporary or permanent, but precautionary measures are temporary. Another difference between the two principles is the scientific degree regarding the causal relationship between the harmful act and the harm. This means that the prevention principle relates to known or proven dangers and is applied when the causal relationship between the harmful act and the harm is scientifically proven. However, in the precautionary principle, the causal relationship between the harmful act and the harm is of doubt, but we should not wait for access to further scientific evidence or the realization of the harm to take precautionary measures (Jiang, 2014).

Despite the difference between the precautionary principle and precaution in the principles of jurisprudence, this principle is not unknown in jurisprudence. The principle of the incumbency of preventing contingent damage, which has been cited by jurists in imperative affairs, is a concept close to the "precautionary principle". Preventing contingent damage is a rational judgment and is not assignable (Lotfi, 2012), so there is no prohibition on citing its general sense in civil liability, and it is citable in terms of substantive justification. The principle of the incumbency of preventing contingent damage stipulates that where there is a fear of damage, action must be taken to prevent it. The theme of the precautionary principle is also the same (Hayati, 2014). Since the precautionary principle only includes irreparable and severe damages but the principle of the incumbency of preventing contingent damage includes all damages, both severe and negligible, their relation is complete inclusion, and the principle of the incumbency of preventing contingent damage includes all entities of the precautionary principle.

It seems that limiting the "precautionary principle" to the relationship between private legal and public legal entities and confining it to the duty of governments and the public powers to accept the liability of exercising precaution in avoiding harmful actions is not acceptable. The rationale verdict of precaution also applies to private relationships between individuals. It is a reasonable statement that individuals are required to take measures to avoid contingent irreparable damage to others due to their actions, or that the person who provides the hazardous environment is obliged to consider all the irreparable consequences of his or her own liability and damage prevention and take the necessary steps to avoid the danger. Accordingly, in preventive civil liability today, the precautionary principle is seen as a basis and justification for advancing the goal of damage prevention.

For the researcher, the "precautionary principle" can be a basis and justification in preventive civil liability for two reasons:

First, as an accepted principle, the precautionary principle in common law as well as jurisprudence, as cited above, is the origin of many international laws and treaties. At the same time, its provisions imply the need to apply the measures of preventing contingent and irreparable damage resulting from contingent and unforeseeable dangers. So requiring to prevent foreseeable damages and dangers in which any common sense can foresee the damage from action is reasonable.

Second, one example of the precautionary principle in minor matters in Iranian law is the duty of the authorities to obtain adequate security to compensate for the damages caused by the security measures. First, it is a precautionary mechanism in the relationship between the person requesting the security measure and the defendant that is important in both preventive civil and compensatory civil liabilities. Second, the place of the precautionary principle to justify civil liability of the official or the state to compensate for the damage to the defendant, due to negligence in applying the precautionary factor of appropriate security, is a basic relationship between the precautionary principle and preventive civil liability.

CONCLUSIONS

Preventive civil liability in Iranian law in the high school social studies textbook has a long history due to jurisprudence-based legal rules and several standards in the regulations on the provision of services, production and supply of products that are based on foresight and deterrence. Another effective side of this legislative background lies in procedural rules on security, precautionary and preventive measures during civil proceedings. In other legal systems, the preventive approach to civil liability has been justified. Also, in other legal systems, the preventive approach to civil liability has been adopted.

Preventive civil liability in the high school social studies textbook can be justified with a number of legal principles in Islamic law. The rules such ad "warning", "action" and "principle of harm" in the Islamic legal system and the rules such as "mitigation of damages", "foreseeability of damage", "precautionary principle" and "the principle of proportionate prevention" are among the principles that justify the use of prevention in civil liability as the rule and basis for determining liability.

Preventive civil liability in the high school social studies textbook has a restorative and complementary role to compensatory civil liability. By defining legal, common

and rational mechanisms, this approach has expanded the scope of civil liability and transcended some of the traditional rules of determining the liable party.

In Iranian law, the scope of preventive civil liability in the high school social studies textbook includes, prior to the harmful act with preventive mechanisms such as the installation of warning signs and the security for relief sought, during the harmful act with mechanisms such as interim order, and after damage with mechanisms such as compensation by appropriate security obtained in judgment in absentia, contingent damage in security for relief sought and so on.

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